and it has guided the legal profession for well over twenty years.

In the circumstances, I therefore allowed the appeal of the defendants/tenants with costs against the plaintiffs/owners. I had further ordered that the deposit for security for costs be paid out to the defendants (respondents in this appeal) to account of costs to be taxed.

Appeal allowed.

Solicitors: *Raj Selva & Co.; Henry Lim & Co.*

PUBLIC PROSECUTOR v. HIEW CHIN FONG

[A.Cr.J. (Chong Siew Fai J.) May 21, 1987]

[Sibu – Criminal Appeal No. 1 of 1987]

Road Traffic – Driving without insurance cover – Whether a period of disqualification should be imposed – Special reasons needed for exemption from imposition – Road Traffic Ordinance 1958, s. 74(2).

The respondent was charged with two offences. The first offence was for using a motor van as a public service vehicle without a licence and the second offence was for using the same vehicle without an insurance cover in respect of third party risks. The respondent was convicted on both charges. On the first charge the respondent was fined $50 (in default one month's imprisonment). As for the second offence, the respondent was fined $100 (in default two weeks' imprisonment). No disqualification from driving was imposed on the respondent.

In the present appeal, the question was whether the magistrate should have imposed a period of disqualification from driving on the respondent. It was not disputed that special reasons had to be stated if no disqualification is imposed. The learned magistrate in the present case did not give any special reasons.

Held, allowing the appeal: (1) there were no special reasons justifying the relief from imposition of the disqualification;

(2) the respondent was disqualified from obtaining or holding a driving licence for a period of 12 months from the date of conviction.

Cases referred to:

(1) *Re Kanapathipillai & Ors.* [1960] M.L.J. 243.
(2) *Whittall* v. *Kirby* [1947] 1 K.B. 194.
(3) *Reay* v. *Young & Anor.* [1949] 1 All E.R. 1102.
(4) *Public Prosecutor* v. *M. Karthiah* [1953] M.L.J. 52.
(5) *Re Chan Eow Beng* [1961] M.L.J. 181.
(6) *Public Prosecutor* v. *Teoh Gaik Beng; Public Prosecutor* v. *Chuah Khay Soon* [1967] 2 M.L.J. 110.
(7) *In re Muniandy* [1954] M.L.J. 168.
(8) *Public Prosecutor* v. *Mohd. Isa* [1963] M.L.J. 135.

CRIMINAL APPEAL.

Abdul Rahman bin Sebeli (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Cur. Adv. Vult.

Chong Siew Fai J.: In the magistrate's court at Sibu, the respondent was charged as follows:

1. "That you, on the 15th day of October, 1986 at about 1330 hours at roundabout Tun Abang Hj. Openg Road, Sibu, in the State of Sarawak, being the driver of motor van No. SC 3716, used the said vehicle as a public service vehicle without there being in force in respect to the said vehicle a valid licence authorizing such use, and thereby you have committed an offence punishable under section 92(1) of the Road Traffic Ordinance 1958."

2. "That you, on the 15th day of October, 1986 at about 1330 hours, at roundabout Tun Abang Hj. Openg Road, Sibu, in the State of Sarawak, being the driver of motor van No. SC 3716, used the said vehicle without there being in force in relation to the vehicle a policy of insurance in respect of third party risks, and that you have thereby committed an offence under section 74(1) and punishable under section 74(2) of the Road Traffic Ordinance 1958."

On his own pleas of guilty, the respondent was convicted on both charges.

In his plea for mitigation which appeared to be directed mainly to the first charge, he said that he had applied for a permit several times but was refused, that driving the motor van as a "public service vehicle" was his source of livelihood and that he asked for leniency and forgiveness.

On the first charge, the respondent was fined $50, in default one month's imprisonment. Respecting this, there is no complaint. Nothing, therefore, need be said about that.

As for the second offence, the respondent was fined $100, in default two weeks' imprisonment. Apparently harbouring sympathy for the respondent, the learned trial magistrate warned the respondent and chose not to impose the disqualification from driving provided in section 74(2) of the Road Traffic Ordinance 1958.

Section 74(2) of the said Ordinance clearly provides a statutory disqualification of 12 months

with power to the trial court to increase the period or, if there are special reasons, to order otherwise. If no disqualification is imposed or if the period of disqualification is reduced, the special reasons must be stated.

In the instant case, no special reason was stated by the learned trial magistrate though it appeared that he was persuaded by the respondent's plea respecting source of livelihood and for leniency.

At the hearing of this appeal, the respondent, upon my inquiry of him for reasons, if any, as to why the disqualification should not be imposed, advanced similar grounds as he did in the lower court though in somewhat more elaborate manner.

As to the test to apply in considering what, in law, amounts to a special reason, and the characteristics of a special reason, Adams J. said in *Re Kanapathipillai & Ors.*[1] :

"In *Whittall* v. *Kirkby* ([1947] 1 K.B. at p. 201) the Court of Criminal Appeal adopted the test applied in the Northern Ireland case of *R.* v. *Crossan* ([1939] N.I. 106) as to what in law amounted to a special reason. This test is as follows:

> 'A 'special reason' within the exception is one which is special to the facts of the particular case, that is, special to the facts which constitute the offence. It is, in other words, a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence, and one which the court ought properly to take into consideration when imposing punishment. A circumstance peculiar to the offender as distinguished from the offence is not a 'special reason' within the exception.'

It follows from this that this limited discretion can never in any circumstances be exercised for a general reason since 'special' is the antithesis of general. The fact that a person is a first offender or that he has not committed a motoring offence for many years are therefore reasons of the most general character and cannot be special reasons. The fact that a person is required to drive for his livelihood or requires his vehicle for his business is not a special reason because it is special to the offender and not to the offence.

What facts constitute a special reason is a matter of law. If the court exercises its power of not endorsing or not suspending a licence for special reasons, the court must state what the special reasons are which lead the court to exercise it. This was decided in *R.* v. *Recorder of Leicester, Ex parte Gabbitas* [1946] 1 All E.R. 615. The facts of each case must be carefully considered and then if the magistrate considers that there are facts which are special to the facts of the case he can, if he so wishes, exercise the limited discretion that was given to him. It is impossible to lay down anything more specific because the facts which may constitute facts that are special to the offence must necessarily vary in every case."

Financial hardship to the offender (*Whittal* v. *Kirby*[2]; *Reay* v. *Young & Anor.*[3]) or that the offender knew of no other means of earning his livelihood (*Public Prosecutor* v. *M. Karthiah*[4]) or that the effect of the disqualification must necessarily and consequently deprive the offender of his livelihood or occupation (*Re Chan Eow Beng*[5]; *Public Prosecutor* v. *Teoh Gaik Beng, Public Prosecutor* v. *Chuah Khay Soon*[6]; *In re Muniandy*[7]) or that the offender was a poor man and would have difficulty to get to his work (*Public Prosecutor* v. *Mohd. Isa*[8] (albeit *obiter*)) is no special reason within the meaning of section 74(2) of the Road Traffic Ordinance 1958 to justify non-imposition of the disqualification.

The offence is not to be taken lightly because if an innocent road user is knocked down and injured or killed, he and/or his dependants may have no means of recovering from the uninsured driver any loss or damage he and/or they may have suffered or sustained.

In the instant case, I am constrained to hold that there exists no special reasons justifying the relief from the imposition of the disqualification. The appeal is allowed. The respondent is disqualified from obtaining or holding a driving licence for a period of 12 months from the date of conviction.

Order accordingly.

KARPAL SINGH S/O RAM SINGH v. MENTERI HAL EHWAL DALAM NEGERI MALAYSIA & ANOR.

[O.Cr.J. (Peh Swee Chin J.) March 9, 1988]

[Ipoh – Criminal Application Nos. 54-1-88 & 54-3-88]

Administrative Law – Habeas corpus – Writ of – Application for – Various allegations raised by Minister – Mala fides – Meaning of – Error in allegation – Inaccurate and irrelevant allegation – Allegation outside the scope of Internal Security Act 1960.

Constitutional Law – Habeas corpus – Writ of – Application for – Whether applicant can be allowed to appear in court and argue his own case – Importance of habeas corpus proceedings.

The applicant who is a Member of Parliament, a State Assemblyman and an advocate and solicitor was placed